In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 852

MAUDE H. LAMAR, Personally and as Executrix of the Estate of FREDERICK C. LAMAR, Deceased, PETITIONER

v.

EDWIN O. BOOKWALTER, District Director of Internal Revenue

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Applying Missouri law, the court of appeals construed the decedent's will as making the bequest of the residue to his widow contingent upon her surviving the administration of the estate.* It is conceded

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* The will provided (Pet. A25, emphasis added):

"I give, devise and bequeath all of the rest, residue and remainder of my property * * * to my wife, Maude H. Lamar,

that, if that was a proper construction of the will, the interest passing to the widow would "terminate or fail" upon "the occurrence of an event or contingency" within the meaning of § 2056(b)(1) of the Internal Revenue Code of 1954 (26 U.S.C., 1958 ed.) and accordingly, as the court of appeals held, was a "terminable interest" not qualifying for the marital deduction for purposes of the federal estate tax. Whether the court of appeals correctly construed the will as imposing such a condition of survivorship—as we submit it clearly did—is, in turn, not a question warranting review by this Court. The petition for certiorari should be denied.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

LOUIS F. OBERDORFER,
Assistant Attorney General.

ROBERT N. ANDERSON,
BENJAMIN M. PARKER,
Attorneys.

MARCH 1964

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to have and to hold as her property absolutely.

"In the event, however, that my wife, Maude H. Lamar, shall die prior to my death and shall not survive me or in the event she shall die simultaneously with myself or as the result of the same common accident or calamity to both of us, *or shall not survive the administration of my estate*, then and in that event, I give, devise and bequeath and dispose of said residue and remainder of my property to the following persons and in the manner as follows: * * * [one-fourth each to a daughter-in-law, a son, and two grandchildren]."

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